PUBLIC PROSECUTOR v. MARGARITA B. CRUZ

[R.Cr.J. (K.C. Vohrah J.) May 28, 1987]

[Kuala Lumpur – Federal Territory Criminal Revision CR 53-7 of 1987]

Criminal Procedure – Charge – Badly framed and drafted – Need to frame a proper charge – Rules applicable.

Criminal Procedure – Plea of guilty – Must be unequivocal.

Immigration – Passport – Possession of passports belonging to other persons – Plea of guilt – Whether possession unlawful – Passport Act 1966, s. 12(1)(g).

The respondent in this case was charged with the offence of possessing two passports which belonged to two other persons. The charge purportedly stated that the offence was under section 12(1) (g) of the Passport Act 1966. The respondent pleaded guilty to the charge. However, the respondent also said that she had lawful authority to keep the passports for the two persons.

Held: (1) it behoves all magistrates and presidents to scrutinize the charges, to read the provision of the statute under which the charge is framed, to understand the constituent ingredients of the charge, to know the nature of the punishment and appreciate the gravity of the charge. If the charge is defective or badly framed, the magistrate should point out the defects and request the prosecuting officer to amend the charge as the accused should truly understand the nature of the charge he is asked to plead to;

(2) when the prosecuting officer gives the facts relating to the charge implicating the accused where the accused has pleaded guilty, the magistrate should be vigilant to see that the facts make out the ingredients relating to the charge and where the accused states the facts which show that one or more of the essential ingredients have not been made out, then notwithstanding the plea of guilty the magistrate should reject the plea and fix a date for evidence to be adduced at a trial;

(3) the magistrate should have rejected her plea of guilty as it did not constitute an unequivocal plea of guilty;

(4) the proceedings before the magistrate must be regarded as a complete nullity;

(5) the conviction and sentence should be set aside.

Cases referred to:

(1) *Lim Beh* v. *Opium Farmer* (1808-84) 3 Ky. 10.
(2) *Jagar Singh* v. *Public Prosecutor* [1936] M.L.J. 114.
(3) *Public Prosecutor* v. *Syed Bakri* [1955] M.L.J. xvii.
(4) *Public Prosecutor* v. *Lim Yoo Hock* [1984] 1 M.L.J. 309.
(5) *Public Prosecutor* v. *Cheah Chooi Chuan* [1972] 1 M.L.J. 215.

CRIMINAL REVISION.

Shaharudin Ali (Deputy Public Prosecutor) for the Public Prosecutor.

Respondent in person.

K.C. Vohrah J. (delivering oral judgment): It perhaps is not very easy to frame a charge under section 12(1) (g) of the Passport Act 1966 (Revised 1974) (Act 150) but I would have expected the officer who prosecuted the respondent in this case in the magistrate's court to have enlisted the help of a deputy public prosecutor or any officer from the Attorney-General's Chambers advising the prosecuting officer's department to draft a proper charge. As it was, the charge before the magistrate appeared as if it had gone into a mangling machine. Badly drafted as it was, the magistrate, having read the charge, should have directed that a proper charge be framed.

I do not know if she had a sight of the provision of the statute under which the respondent was charged. I have time and again exhorted DPPs and magistrates to read the provision in the Act which creates the offence especially in regard to unfamiliar charges, and to scrutinize the charge with which the accused is charged. This charge under the Passport Act is not the sort of charge that comes up often and it is with precisely this sort of charge that the magistrate should have called for the statute from the prosecuting officer or from the library to check the provision under which the charge was made. If the law is not read, how would the magistrate then be able to find out the essential ingredients which constitute the charge? And if a magistrate does not know what the ingredients of the charge are, how is he or she able to explain the charge to the accused? It behoves all magistrates and presidents to scrutinize the charges, to read the provision of the statute under which the charge is framed, to understand the constituent ingredients of the charge, to know the nature of the punishment and appreciate the gravity of the charge. If the charge is defective or badly framed, the magistrate should point out the defects and request the prosecuting officer to amend the charge as the accused should truly understand the nature of the charge he is asked to plead to (see *Lim Beh* v. *Opium Farmer*;[1] *Jagar Singh* v. *Public Prosecutor*[2]).

Prosecuting officers and magistrates should also heed the advice of Thomson J. (as he then was) in the case of *Public Prosecutor* v. *Syed Bakri*[3] as

to how a charge should be framed. (See also *Public Prosecutor* v. *Lim Yoo Hock*[4].)

Then again, when the prosecuting officer gives the facts relating to the charge implicating the accused where the accused has pleaded guilty, the magistrate should be vigilant to see that the facts make out the ingredients relating to the charge and where the accused states facts which show that one or more of the essential ingredients have not been made out, then notwithstanding the plea of guilty, the magistrate should reject the plea and fix a date for evidence to be adduced at a trial.

In this case, the respondent was charged, from what I can make of the charge and after reading section 12(1)(g) of the Passport Act, with an offence of being in possession without lawful authority of two passports which were issued by the Republic of the Philippines not for her own use but for the use of two other persons, an offence under section 12(1)(g) of the Passport Act. The respondent pleaded guilty to the badly framed charge and the prosecution officer gave the court a statement of facts which, briefly stated, show that the police raided a hotel room at 3.40 a.m. on April 4, 1987 and found the respondent, a national of the Philippines, in possession of two passports issued by the Republic of Philippines to two persons, Lena I. Tabuzo and Corazon V. Hofilena respectively. The respondent admitted the facts but said that she was requested by her two friends to keep their passports and that they had gone to Ipoh. Now clearly if what she said is true, then she had lawful authority to keep the passports as the passport holders had requested her to keep the passports. And therefore the essential ingredient in the charge that the possession of the passports was without lawful authority was not made out. The magistrate should have rejected her plea of guilty as it did not constitute an unequivocal plea of guilty. As was stated by Chang Min Tatt J. (as he then was) in *Public Prosecutor* v. *Cheah Chooi Chuan*,[5] "... it is a cardinal principle that any plea of guilt must be completely unreserved, unqualified and unequivocal."

The proceedings before the magistrate must be regarded as a complete nullity. And I set aside the conviction and sentence of imprisonment and fine. It is up to the Public Prosecutor whether to recharge the respondent taking into account, presumably, whether the authorities can secure all necessary evidence for this case at this late stage.

Order accordingly.

PERSHOWA LEASING (M) SDN. BHD. v. KIN SHIPPING LINE SDN. BHD. & ORS.

[O.C.J. (Chong Siew Fai J.) July 17 & September 11, 1987]

[Sibu – Suit No. 60 of 1986]

Shipping – Lease agreement – Failure to pay rents – Summary judgment sought – Application for – Whether there was a bona fide defence.

Hire Purchase – Lease agreement and vessel-building agreement – Whether necessary to register them under the Hire Purchase Registration Ordinance (Cap. 71) – Hire Purchase Registration Ordinance, ss. 5 & 7(1).

The plaintiffs agreed to purchase a certain vessel from, and to be built by, the first defendant. Under the agreement, the first defendant was to take a lease of the vessel from the plaintiffs after the delivery of the vessel. By a lease agreement made on May 21, 1984 between the plaintiffs as the lessor and the first defendant as the lessee, the lessee agreed to a lease for 36 months. The second, third, fourth and fifth defendants jointly and severally guaranteed, *inter alia*, the punctual payment of the rent under the lease. The first defendant defaulted in the payment of the rent. As a result, the present action was instituted. The plaintiffs sought summary judgment against the defendants.

Held: the defendants have failed to set up any *bona fide* defence or raise any issue or question which ought to be tried or show that there ought for some other reasons to be a trial. Judgment should be given for the plaintiffs.

Cases referred to:

(1) *Vacher & Sons Ltd.* v. *London Society of Compositors* [1913] A.C. 107.
(2) *Black-Clawson International Ltd.* v. *Papierwerke Waldhof-Aschaffenburg A.G.* [1975] A.C. 591.
(3) *R.* v. *Bates & Anor.* [1952] 2 All E.R. 842, 844.
(4) *Rolled Steel Products (Holdings) Ltd.* v. *British Steel Corporation* [1985] 3 All E.R. 52.
(5) *Dunlop Pneumatic Tyre Co. Ltd.* v. *New Garage & Motor Co. Ltd.* [1915] A.C. 79.
(6) *Ford Motor Co. (England) Ltd.* v. *Armstrong* (1915) 31 T.L.R. 267.
(7) *Willson* v. *Love* [1896] 1 Q.B. 626.
(8) *Lombank Ltd.* v. *Excell* [1963] 3 All E.R. 486.
(9) *Phonographic Equipment (1958) Ltd.* v. *Muslu* [1961] 3 All E.R. 626.
(10) *Robophone Facilities Ltd.* v. *Blank* [1966] 1 W.L.R. 1428.
(11) *Alec Lobb Ltd.* v. *Total Oil GB Ltd.* [1983] 1 All E.R. 944.
(12) *Alec Lobb Ltd.* v. *Total Oil GB Ltd.* [1985] 1 All E.R. 303.
(13) *Multiservice Bookbinding Ltd.* v. *Marden* [1978] 2 All E.R. 489.

APPLICATION.

Lily Y.K. Wong (Ms) for the plaintiffs.
Hii Hieng Sing for the defendants.

Cur. Adv. Vult.